IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

CIVIL REVISIONAL JURISDICTION

Dated the 15th May, 2013.

Present:

Mr Justice Sharif Uddin Chaklader

And

Mr. Justice A.K.M. Shahidul Huq

Civil Revision No.4178 of 2007.

Revision preferred on the 6th day of September 2007 against the judgment and decree of Additional District judge, 1st Court Comilla dated the 2nd day of August 2007 passed in Title Appeal No.138 of 2006 affirming the judgment and decree of Joint District judge, 2nd Court Comilla dated the 14th day of May 2006 passed in Title Suit No.52 of 2004.

In the matter of:

1. Nurul Islam and others

....Petitioners.

Versus

1. Ali Hossain and others

.....Opposite parties.

Contd/2p.

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION DHAKA.
(CIVIL REVISIONAL JURISDICTION)

Present

Mr. Justice Sharif Uddin Chaklader

And

Mr. Justice A.K.M. Shahidul Huq.

Civil Revision No. 4178 of 2007

In the matter of

Nurul Islam and others

Plaintiff-Appellants-Petitioners.

Vs.

Ali Hossain and others.

Defendant-Respondent-Opposite Parties.

Mr. M.A. Mannan, Advocate with

Mr. Fakhar Uddin, Advocate

For the Petitioners.

Mr. Asadullah, Advocate with

Mr. Shahnaj Haque, Advocate

For the Opposite Parties.

Judgment on 15.05.2013

Sharif Uddin Chaklader, J.

This rule, at the instance of plaintiff, , directed against judgment and decree dated 02.08.2007 passed the learned Additional District Judge, 1st

Court, Comilla dismissing Title Appeal No. 138 of 2006 affirming those dated 21.05.2006 passed by the learned Joint District Judge, 2nd Court, Comilla dismissing Title Suit No. 02 of 2004.

Both the courts below passed lengthy judgment and dismissed the suit. In the body of the judgment of the courts below particularly the appellate court below we find some underse contradiction but at present we are not making any comment of the judgments of the courts below. From plaint it appears that suit was filed for declaration of title as:-

"আদালত দয়া প্রকাশে নিম্ন তপছিলোক্ত ভূমি অন্দরে বাদীগনের নালিশী ২য় তপছিলোক্ত মোয়াজে ৫.৩০ শতক ভুমি বাবদ বাদীগনের খরিদা স্বত্ব স্বার্থে ও দখলাধিকার থাকা আধারনে তৎবাবত এক ডিক্লারেশন পাওয়া এবং মোকাম কুমিল্লার ৩য় সাব জজ আদালতে ১৯৮১ ইং সনের ৭৮ নং দেওয়ানী বন্টনের মোকদ্দমা বিগত ২৬/৮/৮৪ ইং তাং এবং তম্মুলীয় বদলীকৃত ২য় সাব জজ আদালতের ১৯৮৪ ইং সনের ২৫১ নং মোকদ্দমার ৭/৮/৮৫ ইং তারিখের চূড়ান্ত ডিক্রী পন্ড, বাতিল, অকার্যকারী ডিক্রী এবং বাদীগনের প্রচারিত প্রাথমিক ডিক্রী দ্বারা বাদীগন বাধ্য নহে মর্মে অপর এক ডিকলারেশন দিতে এবং ৩য় তপছিলোক্ত দলিলদ্বয় জাল, তনচকী, পন প্রভৃতি বিহীন, যোগ সাজসী হওয়ার মর্মে অপর এক ডিকলারেশন দিতে।"

But we have astonished to find from the judgment of the trial court, we find that courts below framed issues as:-

১।বাদীপক্ষের নালিশের কোন কারন উপজাত হইয়াছে কি।

২। অত্র মোকদ্দমা waiver, estoppel & acquiescence দোষে বারিত কি।

৩। নালিশী ভূমিতে খরিদ সূত্রে বাদীপক্ষের স্বত্ব দখল আছে কি।

৪। বাদীপক্ষ আর কি কি প্রতিকার পাইতে পারে।

No issue has been framed as per prayer of the plaintiff but the suit has been dismissed by lengthy judgment.

Mr. Asadullah, learned Advocate, appearing for the opposite parties, frankly submits that, since issues were not framed as per claim or relief prayed for by the plaintiffs, it is a fit case to sent back suit on remand.

Since we have decided and ~~also in our decision and~~ according to the learned Advocate the suit was ~~proceeding~~ disposed of in wrong premises, we are not required to go deep into the merit of the suit which will be decided by the courts below.

The judgments and decrees complained are set aside. Title Suit No. 02 of 2004 is sent back to the learned Joint District Judge, 2nd Court, Comilla for fresh trial after frame ~~ing~~ proper issues on the claim or relief ~~of the~~ prayed by plaintiffs as well as of defendant and thereafter to pass ~~ed~~ proper judgment. If require, learned Joint District Judge, 2nd court, Comilla may allow the parties to adduce further evidences.

With these observations the rule is made absolute without any order as to cost.

The suit is very old. We are directing the learned Joint District Judge, 2nd Court, Comilla to dispose of Title Suit No. 02 of 2004 expeditiously preferably within 6(six) months from the date of receive of this judgment by the learned Joint District Judge, 2nd Court, Comilla without giving any unnecessary adjournment to the parties.

Send down the lower court records.

Communicate this order at once.

Sharif Uddin Chaklader

A. K. M. Shahidul Huq, J

I agree.

A. K. M. Shahidul Huq

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA
(CIVIL REVISIONAL JURISDICTION)

REVISION FROM APPELLATE DECREE NO. 4178 of 2007

Revision preferred on the 6th day of September, 2007 against the Judgment and decree of Mr. Md. Nababur Rahman, Additional District Judge, 1st Court, Comilla dated the 2nd day of August, 2007 passed in Title Appeal No. 138 of 2006 affirming the judgment and decree of Mrs. Anima Bala Saha, Joint District Judge, 2nd Court, Comilla dated the 14th day of May, 2006 passed in Title Suit No. 02 of 2004.

Nurul Islam,

Nur Ahmed @ Nur Mohammad,

Shamsul Hoque,

Abul Khaiyer,

Torab Ali being dead his heirs:-

Rezia Begum, wife of late Torab Ali,

Md. Ali,

Shamima Akhter, | Both daughters of late Torab Ali.

Rokeya Akhter @ Rokeya Begum, |

Monohar Ali being dead his heirs:-

Shabana Bibi, wife of late Monohar Ali,

Momtajuddin,

Monowara Begum, |

Ayesha Begum @ Hajera Begum, | All daughters of late Monohar Ali.

Mayuri Begum, |

Nuremessa, |

Julekha Begum, |

Suruj Mia being dead his heirs:-

Sufia Khatun, wife of late Suruj Mia,

Abul Kalam,

Abul Hossain,

Kamina Begum, |

Nasima Begum, | All daughters of late Suruj Mia.

Rabeya Begum, |

Shefali Begum, |

Sufia Khatun, wife of Suruj Mia,
Mobarak Hossain,
Mofizul Haque @ Mafizul Islam,
Nazir Ahmed,
Abdul Malek,
Abdul Khalek,
Mohammad Ali.

.... Plaintiff-Appellants;
Who appeared in this revision;
Petitioners

Ambia Khatun, wife of Md. Ibrahim Khalil,
Md. Nurul Amin.

.... Plaintiff-Appellants;
Who did not appear in this revision;
Petitioners

=Versus=

Ali Hossain,
Ahmed Hossain,
Joynal Abedin,
Karfulernessa, wife of late Ali Azzam,
Abdul Malek,
Mariyam Bibi, daughter of late Ali Azzam,
Nasima Akhter, wife of Nasir Ahmed,
Ayesha Khatun, wife of late Mir Hossain,
Fazlur Rahman,
Sahiduddin Ahmed.

.... Proforma-Defendant-Respondent;
Who appeared in this revision;
and

Osman Ali,
Sirajul Hoque,
Amir Hossain,
Abida Khatun, wife of Ali Akbar,

Ayesha Khatun, wife of Amir Hossain,
Alek Hossain,
Abdul Kader,
Rabeya Khatun,
Sajeda Khatun,
Rehana Begum,
All daughters of late Amir Hossain.
Fatema Khatun, wife of late nasaruddin,
Mariam Bibi, daughter of late Ali Asgar,
Hajera Bibi, wife of Sirajul Islam,
Joygun Bibi, wife of unknown,
Chand Mia,
Rabiya Khatun, wife of late Abdul Aziz,
Habibullah,
Abdul Mannan,
Nayan Tara,
Jaheda Begum,
Lahaternessa,
Mamena Khatun,
All daughters of late Ali Mia.
Md. Habibullah,
Abdul Mannan,
Nayantara, wife of late Kala Mia,
Jayeda Khatun, wife of Abdul Samad,
Lajaternessa, wife of Abdul Hamid @ Sona Mia,
Momena Khatun, wife of Mustafizur Rahman,
Shamsul Hoque,
Salimullah,
Kalimullah,
Rahela Begum, daughter of late Aswadullah,
Firoja Begum, wife of late Ali Akbar,
Lalmati Bibi, wife of late Abdul Kader,
Abu Taher,
Mamena Khatun,
Saleha Khatun,
Rahima Khatun, wife of late Abdul Manna,

Rahatarnessa, wife of Abul Hashem,

Shamsun Nahar, wife of Abdur Rob,

Abdul Latif,

Foez Ahmed,

Rahima Begum, | Both wives of late Anu Mia,
Hafeza Khatun, |

Hafeza Khatun, wife of Abbas Ali,

Abu Taher,

Abdul Hoque,

Shamsal Hoque,

Nurunnessa,

Amena Khatun, wife of Julfu,

Anowar Hossain,

Zaheda Khatun, daughter of Sirajul Islam,

Halima Khatun, wife of Fazlur Rahman,

Mohammad Kamal Hossain,

Md. Ibrahim Khalil,

Abdul Malek.

...............Proforma-Plaintiff/ Appellants;
Who did not appear in this revision;
Opposite Parties

Revision Valued at Tk. 53,000/=only;

Upon this revision coming on for hearing in a Division Court before;

Mr. Justice Sharif Uddin Chaklader.

And

Mr. Justice A.K.M. Shahidul Huq.

Two of the Judges of this Court;

On the 15th day of May, 2013 and for judgment on the 15th day of May, 2013.

It is ordered that the Rule be and the same is hereby made absolute without any order as to costs.

And it is further ordered that the judgments and decrees complained are hereby set aside.

And it is further ordered that the Title Suit No. 02 of 2004 is hereby sent back to the learned Joint District Judge, 2nd Court, Comilla for fresh trial after framing proper

issues on the claim or relief prayed by the plaintiff, as well as of defendant and thereafter to pass a proper judgment. If require, learned Joint District Judge, 2nd Court, Comilla may allow the parties to adduce further evidences.

And it is further ordered and directed that the learned Joint District Judge, 2nd Court, Comilla to dispose of Title Suit No. 02 of 2004 expeditiously preferably within 6(six) months from the date of receive of this judgment by the learned Joint District Judge, 2nd Court, Comilla without giving any unnecessary adjournment to the parties.

Dated this the 15th day of May in the year of two thousand and thirteen of the Christian Era.

Sharif Uddin Chaklader

A. K. M. Shahidul Huq

A. H/

Read by:

Exd by:

প্রত্যায়িত অবিকল প্রতিলিপি

সহকারী রেজিষ্ট্রার
বাংলাদেশ সুপ্রীম কোর্ট হাইকোর্ট বিভাগ